THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :21061 2007

DATED:05-10-2007

BETWEEN:

M/s Usha Kiron Movies Limited,
A company incorporated under the Companies Act, 1956, having its registered office at Ramoji Film City,
Hyderabad,
Rep., by its authorized Signatory and G.P.A. holder
Sri V.Govinda Rao.

..... PETITIONER

AND

The District Collector,
Rangareddy District,
Lakdikapul,
Hyderabad & 4 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner seeks a writ of mandamus directing the respondents not to take any action, in pursuance of any order that might be passed by the respondents in any proceedings, including the proceedings under notice No.C/49/2006, dated 05-02-2007, of the 3rd respondent, in respect of the lands of the petitioner in Sy.No.293 and 294 of Anajpur village, Hayathnagar mandal, Rangareddy District, which is part of the notified tourism center, during the period allowed under law for appeal or revision or other proceeding against any such orders.

3. Petitioner questions the notice issued under Section 7 of the A.P.Land Encroachment Act, 1905 (for brevity, 'the Act') calling upon the petitioner to submit explanation within fifteen days as to why the petitioner shall not be evicted from the land and forfeiture of the building, constructions, and things deposited thereon under Section 6 of the Act in respect of an extent of Ac.3.32 guntas in Sy.No.293, Anajpur village, which is the ceiling surplus land in C.C.No.410/E/75; Ac.0.10 guntas in Sy.No.293 which is the ceiling surplus land in C.C.No.414/E/75; and Ac.6.02 guntas in Sy.No.294 which is the ceiling surplus land in C.C.No.410/E/75 situated at Anajpur, Hayathnagar mandal,

Rangareddy District. Insofar as the land of an extent of Ac.3.00 in Sy.No.491 which is said to be the ceiling surplus land as per the order in C.C.No.1228/E/75 of Anajpur village, it is stated that the said land belongs to Margadarsi Chit Funds Limited and therefore, petitioner-M/s Usha Kiron Movies Limited is not in a position to make any comments in respect of the said item of the land. Insofar as Ac.4.02 guntas in Sy.No.293 which is said to be the ceiling surplus land as per the orders in C.C.No.410/E/75 and C.C.No.414/E/75, it is stated that the said land is not the surplus land and the petitioner requested to furnish copies of the order in C.C.No.414/E/75 and 410/E/75 vide his representation, dated 23-05-2007, for which the Special Grade Deputy Collector and Tahsildar, Rangareddy District issued Memo Nos.K/506/07, dated 25-05-2007, stating that the order in C.C.No.E/414/75 is not available in the office. Insofar as the proceedings in C.C.No.E/410/75 is concerned, the said file also is not available in the office, and accordingly, Memo K/506/07, dated 25-05-2007, has been issued. It is stated that though the relevant material has not been furnished *in spite* of his repeated representations, dated 23-02-2007, 23-04-2007, and 23-05-2007, petitioner submitted explanation on 20-06-2007 stating that the said lands are not surplus lands and he purchased the said lands vide sale deeds, dated 11-11-1991, registered as document Nos.10981 and 10977/92 respectively with the Sub-Registrar, Hyderabad East, and thereafter on application for conversion of the said lands into non agricultural lands under Section 61 of the A.P.Land Revenue Act, 1317 Fasli and after recommendations of the concerned authorities as well as the Revenue Divisional Officer, Hyderabad East, the District Collector, Hyderabad passed orders for such conversion

in proceedings No.B1/7451/91, dated 15-10-1991, converting the said agricultural lands into non agricultural lands.

4. It is stated that in fact in Writ Petition No.10623 of 1998 filed before this Court in Public Interest Litigation making allegations against the petitioner and other sister-concern that they are in occupation of the surplus lands, the District Collector, Rangareddy District filed a counter on 25-07-1999 stating that insofar as the lands in Sy.Nos.282-300 of Anajpur village are concerned, they are the non agricultural lands as permission has been granted by the Collector vide proceedings B1/7451/91, dated 15-10-1991, and the petitioner herein i.e., M/s Usha Kiron Movies purchased the land in Sy.No.282-289 from the pattadars who were not attracted by the ceiling laws. Thus it is stated that there is no dispute with regard to the right, title of the petitioner and the said land is not a surplus land and the petitioner is not in occupation of any surplus ceiling land but it is a lawful owner having purchased the same from the pattadars.

5. Admittedly, the impugned notice is only a show cause notice issued under Section 7 of the Act calling upon the petitioner to submit explanation and the petitioner submitted his explanation on 20-06-2007. Petitioner submits that the proceedings initiated under the said Act are illegal, arbitrary, and unsustainable and as per the objects of the said Act, it is open for the Government to summarily evict the encroachers of the Government land and as per Section 2 of the said Act the right of property in the public roads, etc., water, and lands shall not be encroached and if any such encroachments are there it will affect the public at large. Under Section 3 of the said Act whoever is in unauthorized occupation of any land, which is the property of the Government,

shall also be liable for payment of a sum apart from the payment of penalty under Section 5 of the Act instead of evicting them.

6. It is stated that initiation of proceedings under the Act is illegal, arbitrary as per the decision of the Apex Court in ***GOVERNMENT OF ANDHRA PRADESH v. THUMMALA KRISHNA RAO AND ANOTHER***[1] wherein the Apex Court held that if there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 of the Act for evicting the person who is in possession of the property under a *bona fide* claim or title. The summary remedy prescribed by Section 6 of the Act is not the kind of legal process which is suited to an adjudication of complicated questions of title.

7. On the other hand, learned Government Pleader submits that as per the judgment of the Apex Court in ***SPECIAL DIRECTOR AND ANOTHER v. MOHD.GHULAM GHOUSE AND ANOTHER***[2] it is not open for the petitioner to challenge the show cause notice as the petitioner will be given reasonable time to vacate the said lands in question as well as the buildings in the event of passing any orders by the 3rd respondent-Tahsildar, Hayathnagar, under Section 6 of the Act. It is stated that even after passing the orders under Section 6 of the Act, reasonable time of ten or fifteen days will be given so as to enable the petitioner in vacating and handing over the vacant possession of the said land and in the meantime it is also open for the petitioner to file an appeal under Section 10 of the Act before the Revenue

Divisional Officer. It is stated that within sixty days from the date of receipt of the order, remedy of appeal can be availed and therefore there cannot be any apprehension to the petitioner that the respondents are going to take coercive steps and forcibly evict the petitioner by demolishing the structures even before giving reasonable time to the petitioner. On the other hand, learned counsel appearing for the petitioner submits that the past experience of the petitioner goes to show that when an order has been passed under the Act after passing the order in proceedings No.C/122/07, dated
05-09-2007, which was served late in the evening on the same day, and even before the matter was moved by way of lunch motion on 07-09-2007 the structures have been demolished on 06-09-2007 itself even though the said order passed by the Mandal Revenue Officer is appealable within ninety days from the date of receipt of the order to the Revenue Divisional Officer under Section 4-A of the A.P.Assigned Lands (Prohibition of Transfers) Act.

8. The Apex Court in the aforesaid case which relates to a show cause notice involving Rs.270 Crores on account of forged, manipulated accounts which was questioned before High Court and the High Court, without assigning any reasons granted interim order and in those circumstances the Apex Court held that there was clear violation of the provisions of the Foreign Exchange Regulation Act (FERA) and Foreign Exchange Management Act (FEMA) which led to such large-scale illegal transactions of more than Rs.270 Crores and the High Court without assigning any reasons granted interim stay, but in the instant case learned counsel appearing for the petitioner submits that the respondents are bent upon to put the petitioner to irreparable loss and injury by

trying to demolish the structures and take unjustified action. This Court is not willing to go into the merits of Writ Petition filed against show cause notice though several arguable points have been raised with regard to the initiation of proceedings under the Act and therefore, I am not inclined to admit the Writ Petition or grant stay of further proceedings of enquiry.

9. I am of the opinion that if a reasonable breathing time is given to the petitioner so as to enable him to avail the alternative remedy against the orders that may be passed by the 3rd respondent pursuant to the impugned proceedings No.C/49/06, dated 05-02-2007, no prejudice will be caused to the respondents. Though several contentions have been raised in this Writ Petition about the importance of the petitioner's activities which has been declared as notified tourist center and as per the amended provisions of

Section 4 of the A.P.Assigned Lands (Prohibition of Transfers) Act, the assigned lands need not be restored to the original assignees in respect of the notified lands and the area in question is notified by the Government under Section 4(1)(b) of the A.P.Assigned Lands (Prohibition of Transfers) Act for making use of the said land for public purpose and public purpose means and includes protection of industrial and tourism or for any other public purpose and therefore, it is stated that when the Government is acquiring huge lands and allotting for similar public purposes there cannot be any justification on the part of the Government to disturb the petitioner from possession of the said lands. I am not inclined to express any opinion with regard to the rival contentions as the impugned notice is only a notice issued under Section 7 of the Act for which an explanation has already been submitted.

10. Having regard to the facts and circumstances of the case, Writ Petition is disposed of directing the 3rd respondent to consider the explanation of the petitioner and after giving reasonable opportunity to the petitioner of personal hearing conduct an enquiry and pass appropriate orders under Section 6 of the Act and in the event of passing any adverse orders against the petitioner, reasonable time of fifteen days from the date of service of the order, passed if any, may be given to the petitioner to remove the encroachment so as to enable him to avail any legal remedy. There shall be no order as to costs.

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V.ESWARAIAH,J

05th October, 2007.
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[1] AIR 1982 SUPREME COURT 1081
[2] (2004) 3 SCC 440